

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

SANDRA E. FLUCK, an individual,	:	C.A. No.:
	:	
Plaintiff,	:	<u>DEMAND FOR JURY TRIAL</u>
v.	:	
	:	
HOENEN & MITCHELL, INC., a Delaware corporation, BELLA VISTA DEVELOPMENT, LLC, a Virginia corporation, BELLA VISTA TOWNHOME CONDOMINIUM ASSOCIATION, INC., a Delaware corporation, RE/MAX REALTY GROUP, a Delaware franchise, and WILLIAM J. MITCHELL, an individual,	:	
	:	
Defendants.		

COMPLAINT**PARTIES**

1. Plaintiff Sandra Fluck is an individual who resides at 1421 Nectarine Road, Danielsville, Pennsylvania 18038.
2. Defendant Hoenen & Mitchell, Inc. (hereinafter referred to as "Hoenen & Mitchell") is a Delaware corporation, whose Vice President and registered agent is F. Wayne Mitchell, 18548 Arabian Acres Road, Lewes, Delaware 19958. . [PLAINTIFFS DEMAND THAT THE DEFENDANT, HOENEN & MITCHELL, DENY THE ALLEGATIONS CONTAINED IN THIS PARAGRAPH IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH THE PROVISIONS OF 10 Del. C. §3915.]
3. Defendant Bella Vista Development, LLC (hereinafter referred to as "Bella Vista Development"), is a foreign corporation, whose registered agent is Manuel G. Serra, 1307 Vincent Place, McLean, Virginia 22101. [PLAINTIFFS DEMAND THAT DEFENDANT, BELLA VISTA DEVELOPMENT, DENY THE ALLEGATIONS CONTAINED IN THIS

PARAGRAPH, IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH PROVISIONS OF 10 DEL. C. §3915].

4. Defendant Bella Vista Townhome Condominium Association, Inc. (hereinafter referred to as "Bella Vista TCA"), is a Delaware corporation, whose registered agent is Dover Delaware Incorporators, c/o Brandon Jones, Esquire, 309 Rehoboth Avenue, P.O. Box P, Rehoboth Beach, Delaware 19971. [PLAINTIFFS DEMAND THAT THE DEFENDANT, BELLA VISTA TOWNHOME CONDOMINIUM ASSOCIATION, INC., DENY THE ALLEGATIONS CONTAINED IN THIS PARAGRAPH IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH THE PROVISIONS OF 10 Del. C. §3915.]

5. Defendant RE/MAX Realty Group (hereinafter referred to as "RE/MAX Realty") is a Delaware franchise located at 317 Rehoboth Avenue, Rehoboth Beach, Delaware 19971. [PLAINTIFFS DEMAND THAT DEFENDANT, RE/MAX REALTY GROUP, DENY THE ALLEGATIONS CONTAINED IN THIS PARAGRAPH, IF UNTRUE, BY AFFIDAVIT IN ACCORDANCE WITH PROVISIONS OF 10 DEL. C. §3915.]

6. Defendant William J. Mitchell (hereinafter referred to as "Mitchell") is the managing agent for RE/MAX Realty Group located at 317 Rehoboth Avenue, Rehoboth Beach, Delaware 19971.

JURISDICTION

7. Paragraphs 1 through 6 are incorporated by reference.

8. Jurisdiction is conferred pursuant to 28 U.S.C. §1332(a)(1) and § 1332(c)(1) as the amount in controversy exceeds \$75,000.00 and the action is between citizens of different states. Venue is proper in this Court pursuant to 28 U.S.C. §1331(a), as this is the judicial district in which a substantial part of the events or omissions giving rise to this claim occurred.

FACTUAL ALLEGATIONS

9. Paragraphs 1 through 8 are incorporated by reference.

10. On June 27, 2004, at approximately 3:00 p.m., Plaintiff Fluck was a business invitee at an "open house" located at the Bella Vista Townhome and Condominium development in Rehoboth Beach, Delaware, which was constructed by Defendant Hoenen & Mitchell.

11. At the aforesaid date and place, the "open house" was organized and/or managed by Defendant RE/MAX Realty, through their managing agent, Defendant Mitchell.

12. At the aforesaid date and place, as Plaintiff Fluck exited one of the model condominium units, she fell on defective concrete steps.

13. At all times relevant, Defendant Hoenen & Mitchell, Defendant Bella Vista Development, Defendant Bella Vista TCA, Defendant RE/MAX Realty and Defendant Mitchell, were the owners, contractors, operators, and/or managers of the premises where the incident in question occurred.

14. The direct and proximate cause of the aforesaid accident was the negligence of the aforementioned Defendants.

COUNT I
CLAIM AGAINST HOENEN & MITCHELL, INC.

15. Paragraphs 1 through 14 are incorporated by reference.

16. Defendant Hoenen & Mitchell, as the owner, contractor, builder and/or developer of the premises in question, is liable for the injuries to Plaintiff Fluck, as they have a duty to maintain areas of the premises ordinarily used by customers in a reasonably safe condition for their use.

17. The direct and proximate cause of the accident was the negligence of Defendant Hoenen & Mitchell as follows:

(a) They created and/or constructed a dangerous condition, which Defendant knew or should have known, created an unreasonable risk of harm to others, including Plaintiff Fluck;

(b) They improperly maintained the premises, which Defendant knew or should have known, would create an unreasonable risk of physical harm to others, including Plaintiff Fluck;

(c) They failed to take reasonable actions to make safe the hazardous condition on their premises, namely the defective steps;

(d) They failed to take adequate steps to prevent the dangerous condition then existing on their premises;

(e) They failed to warn Plaintiff Fluck of the dangerous condition then existing on the premises;

(f) They failed to properly inspect the premises before allowing individuals, including Plaintiff Fluck, to use it;

(g) They were otherwise negligent in that they failed to fulfill their duty to protect individuals while on a premises under their control, including Plaintiff Fluck, from dangerous conditions;

(h) They permitted a dangerous condition to exist in an area where Defendant knew or should have known individuals would be walking and/or stepping;

(i) They were otherwise negligent.

COUNT II
CLAIM AGAINST BELLA VISTA DEVELOPMENT, LLC

18. Paragraphs 1 through 17 are incorporated by reference.
19. Defendant Bella Vista Development, as the owner, operator, and/or manager of the premises in question, is liable for the injuries to Plaintiff Fluck, as they have a duty to maintain areas of the premises ordinarily used by customers in a reasonably safe condition for their use.

20. The direct and proximate cause of the accident was the negligence of Defendant Bella Vista Development as follows:

- (a) They created and/or permitted a dangerous condition to exist, which Defendant knew or should have known, created an unreasonable risk of harm to others, including Plaintiff Fluck;
- (b) They improperly maintained the premises, which Defendant knew or should have known, would create an unreasonable risk of physical harm to others, including Plaintiff Fluck;
- (c) They failed to take reasonable actions to make safe the hazardous condition on their premises, namely the defective steps;
- (d) They failed to take adequate steps to prevent the dangerous condition then existing on their premises;
- (e) They failed to warn Plaintiff Fluck of the dangerous condition then existing on the premises;
- (f) They failed to properly inspect the premises before allowing individuals, including Plaintiff Fluck, to use it;
- (g) They were otherwise negligent in that they failed to fulfill their duty to protect individuals while on a premises under their control, including Plaintiff Fluck, from dangerous conditions;
- (h) They permitted a dangerous condition to exist in an area where Defendant knew or should have known individuals would be walking;
- (i) They were otherwise negligent.

COUNT III
CLAIM AGAINST BELLA VISTA CONDOMINIUM
AND TOWNHOME ASSOCIATION

21. Paragraphs 1 through 20 are incorporated by reference.

22. Defendant Bella Vista TCA, as the owner, operator, and/or manager of the premises in question, is liable for the injuries to Plaintiff Fluck, as they have a duty to maintain areas of the premises ordinarily used by customers in a reasonably safe condition for their use.

23. The direct and proximate cause of the accident was the negligence of Defendant Bella Vista Development as follows:

(a) They created and/or permitted a dangerous condition to exist, which Defendant knew or should have known, created an unreasonable risk of harm to others, including Plaintiff Fluck;

(b) They improperly maintained the premises, which Defendant knew or should have known, would create an unreasonable risk of physical harm to others, including Plaintiff Fluck;

(c) They failed to take reasonable actions to make safe the hazardous condition on their premises, namely the defective steps;

(d) They failed to take adequate steps to prevent the dangerous condition then existing on their premises;

(e) They failed to warn Plaintiff Fluck of the dangerous condition then existing on the premises;

(f) They failed to properly inspect the premises before allowing individuals, including Plaintiff Fluck, to use it;

(g) They were otherwise negligent in that they failed to fulfill their duty to protect individuals while on a premises under their control, including Plaintiff Fluck, from dangerous conditions;

(h) They permitted a dangerous condition to exist in an area where Defendant knew or should have known individuals would be walking;

- (i) They were otherwise negligent.

COUNT IV
CLAIM AGAINST WILLIAM J. MITCHELL

- 24. Paragraphs 1 through 23 are incorporated by reference.
- 25. Defendant William J. Mitchell, as the managing agent of the premises in question, is liable for the injuries to Plaintiff Fluck, as he has a duty to maintain areas of the premises ordinarily used by customers in a reasonably safe condition for their use.
- 26. The direct and proximate cause of the accident was the negligence of Defendant Mitchell as follows:
 - (a) He permitted a dangerous condition to exist, which Defendant knew or should have known, created an unreasonable risk of harm to others, including Plaintiff Fluck;
 - (b) He improperly maintained the premises, which Defendant knew or should have known, would create an unreasonable risk of physical harm to others, including Plaintiff Fluck;
 - (c) He failed to take reasonable actions to make safe the hazardous condition on the premises, namely the defective steps;
 - (d) He failed to take adequate steps to prevent the dangerous condition then existing on the premises;
 - (e) He failed to warn Plaintiff Fluck of the dangerous condition then existing on the premises;
 - (f) He failed to properly inspect the premises before allowing individuals, including Plaintiff Fluck, to use it;
 - (g) He was otherwise negligent in that he failed to fulfill his duty to protect individuals while on a premises under his control, including Plaintiff Fluck, from dangerous conditions;

(h) He permitted a dangerous condition to exist in an area where Defendant knew or should have known individuals would be walking;

(i) He was otherwise negligent.

COUNT V
CLAIM AGAINST RE/MAX REALTY GROUP

27. Paragraphs 1 through 26 are incorporated by reference.

28. At all times relevant to this litigation, William J. Mitchell was the agent, servant, and/or employee of Defendant RE/MAX Realty Group. [DENIAL OF THIS ALLEGATION BY THE DEFENDANT MUST BE MADE BY AFFIDAVIT, PURSUANT TO 10 DEL. C. §3116.]

29. Defendant RE/MAX Realty is vicariously liable for the negligent acts of its agent, servant and/or employee.

30. The proximate cause of the aforesaid incident was the negligence of Defendant RE/MAX Realty by permitting William J. Mitchell, whom it knew or should have known, would maintain a dangerous condition on said premises likely to cause injuries to third persons, thereby acting in a manner which constituted willful and wanton disregard for the safety of others, including Plaintiff Fluck.

COUNT VI
CLAIM OF SANDRA E. FLUCK

31. Paragraphs 1 through 30 are incorporated by reference.

32. As a direct and proximate result of Defendants' negligence, Plaintiff Fluck suffered severe personal injuries both of a temporary and permanent nature including, but not limited to: trimalleolar (three) fractures of the left ankle resulting in widening of the ankle mortise and a plantar spur; open reduction and internal fixation of the mediolateral malleolus of her left ankle utilizing a 6-hole 1/3 tibial plate with two 4 mm screws; severe pain and swelling

of the left ankle; substantial weakness and limited range of motion of the left ankle; persistent pain in the left ankle; and right mid-foot sprain.

33. As a consequence of her injuries, Plaintiff Fluck has been required to undergo prolonged medical treatment including, but not limited to: emergency medical care; medical examinations; diagnostic testing; surgery of the left ankle; hospitalization; cast immobilization; extensive physical therapy; restriction of her daily activities; work restrictions; and medication for pain management.

34. As a further result of Defendants' negligence, Plaintiff Fluck has experienced, continues to experience, and is likely to experience in the future substantial physical pain, suffering, and discomfort, including future surgery for hardware removal.

35. As a further result of her injuries, Plaintiff Fluck has experienced, continues to experience, and is likely to experience in the future emotional pain, suffering, anxiety, nervousness, and difficulty sleeping.

36. As a further consequence of Defendants' negligence, Plaintiff Fluck has incurred, and may in the future continue to incur, medical bills for the treatment of the injuries sustained in the fall.

37. As a further consequence of her injuries, Plaintiff Fluck has suffered a loss of earnings and may in the future suffer a loss of earnings and impairment of earning capacity.

WHEREFORE, Plaintiff Sandra E. Fluck, respectfully requests that this Court enter judgment against the Defendant Hoenen & Mitchell, Inc., Defendant Bella Vista Development, LLC, Defendant Bella Vista Townhome Condominium, Inc., Defendant RE/MAX Realty Group and Defendant William J. Mitchell, jointly and severally, for compensatory damages, punitive damages and special damages, and the cost of this action, along with any additional relief that this Court may deem proper.

DOROSHOW, PASQUALE,
KRAWITZ & BHAYA

BY: Andrea G. Green

ANDREA G. GREEN, ESQUIRE

Attorney I.D. No.: 2487

JENNIFER S. DONAHUE, ESQUIRE

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Millsboro, DE 19966

(302) 934-9400

Attorneys for Plaintiff

DATED: *March 17, 2006*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SANDRA FULLER

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
Doroshow, Pasquale, Krawitz & Bhaya,
213 E. Dupont Hwy,
Millsboro, DE 19966 302-934-9400DEFENDANTS Hoener & Mitchell Inc., Bella Vista
Development + LLC, Bella Vista Town home
Condominium Assoc. Inc., RE/MAX REALTY GROUP,
William J. Mitchell, Sussell

County of Residence of First Listed Defendant

SUSSEX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slender	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Civil Rights	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	Habens Corpus:	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

VI. CAUSE OF ACTION

Brief description of cause: DIVERSITY - PERSONAL INJURY

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/17/06

SIGNATURE OF ATTORNEY OF RECORD

Andrea G. Green

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____